Supreme Court, U.S.
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No

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**In The**

# Supreme Court of the United States

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October Term, 1997

DAVID R. JOHNSON,

Petitioner,

vs

THE STATE OF ILLINOIS , et al., THE STATE OF ILLINOIS, DEPARTMENT AND / OR BUREAU OF PUBLIC AID, AND CHILD SUPPORT ENFORCEMENT, ROBERT W. WRIGHT, ROBERT M. SHIFFER, PHIL BRADLEY, FATH RICHARD. C. BASQUE, COOK COUNTY DEPARTMENT AND / OR BUREAU OF PUBLIC AID, AND CHILD SUPPORT ENFORCEMENT, STATE ATTORNEY OFFICE, STATE ATTORNEYS JACK O'MALLY AND LEONAED N. FOSTER.

Respondents,

*Petition for Writ of Certiorari to United States Court of the Seventh Circuit*

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## PETITION FOR WRIT OF CERIORARI

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Chicago Ill. 60601
Phone (312) 819-1569

## QUESTION PRESENTED FOR REVIEW

1. The question is not whether the respondent violation federal child support and child support enforcement laws because the State court, federal courts, the parties and the State's administrative officer agreed that the state took action against Johnson base on an assumption that Johnson owed past due child support when there was never an order of support entered against him.

2. The question is who has jurisdiction to award damages and refund if such violation of federal laws may not be in violation of the State's laws.

3. Whether the U.S. Appellant Court err in the date in which they assumed the State Circuit Court noted the nonexistence order of support was entered that cause this Court to enter an order that barred Johnson's complaint due to statue of limitation.

4. Whether untrue statements, fraudulently concealing the facts of the nonexistencing order of support, the State Court of Appeal dismissing Johnson's State's motion for refund and tort due to the State Circuit Court lacks of jurisdiction and the State continues violation and failure to comply with federal mandate in establishing and enforcing child support will toll limitation.

5. This is a question of pending jurisidiction and continue violation of federal laws.

## LIST OF PARTIES TO THE PROCEEDING

DAVID R. JOHNSON- PITITIONER,

LYNNE WEST YARBER, -NONCUSTODAULY PARENT

THE STATE OF ILLINOIS, DEPARTMENT AND / OR BUREAU OF PUBLIC AID, AND CHILD SUPPORT ENFORCEMENT, ROBERT W. WRIGHT, ROBERT M. SHIFFER, PHIL BRADLEY, FATH RICHARD. C. BASQUE

COOK COUNTY DEPARTMENT AND / OR BUREAU OF PUBLIC AID, AND CHILD SUPPORT ENFORCEMENT, STATE ATTORNEY OFFICE, STATE ATTORNEYS JACK O'MALLY AND LEONAED N. FOSTER, - RESPONDENT

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## OPINION BELOW

DAVID R. JOHNSON, Petitioner - Appellant vs. THE STATE OF ILLINOIS , et al., Defendants - Appellee, THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT 96-4102 JULY 15, 1997,

## STATEMENT OF JURISDICTIONAL

(i) After the State court of Appeal denied Petitioner's Motion for tort action and refund in June 1995, because Johnson filed his federal complaint in Feb. 1995, pursuant to 28 USC 1367 (d) Supplement Jurisdiction the petitioner's complaint was filed in an timely manner; and due to the petitioner being given an administrative review in Oct. 1996 as required and Federal Questions pursuant to 28 U.S.C. 1331 the U.S. District court also have jurisdiction, but the petitioner's complaint barred under statue of limitation and denied due to lacks of jurisdiction.

(ii) The judgment sought to be reviewed was filed by the United States Court of Appeals for the Seventh Circuit Court on July 15, 1997, pursuant to 28 USC 1291 Appellate Jurisdiction

(iii) Petitioner's Petition for Rehearing was denied by the United States Court of Appeals for the Seventh Circuit Court on Aug. 25, 1997.

(iv) Petitioner's Petition for Writ of Certiorari was sent to the U.S. Court on Oct. 31, 1997, by U. S. mail and received on Nov. 3, 1997.

(v) Petitioner's Petition for State of Illinois Administrative Review was dismissed for want of jurisdiction on Dec. 23 , 1997.

(vi) Petitioner filed a motion to review the State of Illinois Administrative Review in the State Circuit Court in Jan. 1998.

(vii) Petitioner's Petition for Writ of Certiorari was returned to the Petitioner with a letter stating that Johnson had 60 days as of Jan. 22, 1997, to correct said petition and return it to the U.S. Supreme Court pursuant to 28 U.S.C. 1251 (b) (2) Original Jurisdiction, and 28 U.S.C. 1253, direct appeal from decision of three-judge court

## STATUTES INVOLVED

The 4th and 14th Amendment of the U.S. Constitution, Rule of the Supreme Court of the United States, Rule 12(a) & (b), 45 CFR 305.100, 45 CFR 303.72 (h) (6,), 45 CFR 303.72. (e) (ii) and (iii), 45 CFR 303.72. (f ) (4) or (g) (7), 45 CFR 303.72.(a), (4) ,42 U.S.C. 1983, 42 U.S.C. 1985, 28 U.S.C. 1443, 735 ILCS 5/13-217, 750 ILCS 60/226, 735 ILCS 5/13-215, ILLINOIS S. CT. RULE 137, 305 ILCS 5/10-17.3 and 17.5, 750 ILCS 20/17.3 (c) and 26 sec 6103 (a) and (d) of the Internal Revenue code

## STATEMENT OF CASE

The State's violation began on April 30, 1986, when the State Circuit Court entered an order declaring the Petitioner David Johnson, the father of Caree West in the case 84M 911051, without informing Johnson of the time, place and the hearing.

Johnson did not know of the hearing, there was no blood test by the courts and Johnson has evidence to support his absence at the time West was conceived.

In 1988 the State upon its own initiative erroneously or wrongfully submitted Johnson's name to the Clerk of the Court claiming that he was ordered to pay child support.

By 1990 the State began to intercept Johnson's tax refunds based on an order they claimed was entered March 1, 1988, but never informed Johnson of his right to contest these interceptions and the time he must seek action as required under 45 CFR 303.72 (e) (ii), (iii).

On Sept. 20, 1991, West filed a Petition for Rule through the State's Attorney's office and the Department of Public Aid against Johnson for arrearage and to modify the alleged order of support that they were claiming was entered on March 1, 1988 (exhibit "E- 1").

Any exhibit that begins with letter "E" and then has a number after it, such as exhibit "E-15", will be found in the U.S Court of Appeal Appellant's Appendix..

This became a priority case because the State brought the matter to court in 8 weeks (in Oct. 1991), sooner than a normal case which takes around a year, but due to the State's failure to inform Johnson of the court date in a timely manner the case was continued on Jan. 23, 1992.

In response Johnson filed a motion to modify custody, as shown on page 1 of the State Court of Appeal order. Hon. Judge Brained was the original judge, but he only heard this issue once (exhibit "E-5").

The case was later assigned to Judge Hamilton. On March 19, 1992, (exhibit "E-6") she heard this matter of the State's Petition for Arrearage and to modify the child support order that was claimed to have been entered on March 1, 1988, (exhibit "E -1") for the first time, but "the matter was continued because there was no order of support in the court file or the state file."As noted in the order.

On May 19, 1992, Judge Hamilton's second time reviewing this matter of arrearage, the State Court entered an order for the court reporter to produce the proceeding of Jan. 14, 1988, instead of March 1, 1988, since the State was now claiming that the alleged order was entered on Jan. 14, 1988. (exhibit "E-7" )

There was no other order entered in May 1992, nor was there any other hearing in this matter in May 1992.

The parties later agreed to address Johnson's Motion to Modify Custody to give the State time to locate the court reporter and her notes of the proceedings of Jan. 14, 1988, after they failed to produce the order they claimed was entered on Jan. 14, 1988, as ordered by the Court.

Page 2 of the State Court of Appeal order 1-941361 noted that "there was an intervening period in which Johnson was awarded custody of the minor child."

This modified custody order was entered on May 5, 1993. (U.S District Court Exhibit E -18). Any decision entered on the matter of nonexistence of child support hereafter will make Johnson's complaint filed in a timely manner since Johnson's original complaint was filed in the U.S. District Court in Feb. 1995.

Page 2 of the U. S. District Court and page 2 of the State Court of Appeal both noted "this matter was pending in the State Circuit Court for two years" because "the State could not produce the original order" and "while the parties disputed the existence of the order of support"( exhibit "E-17" and the U. S. District Court order which is in the back of the Appellant's U.S. Court of Appeal Brief ).

On Sept. 1, 1993, Johnson, the custodial parent filed a motion seeking support from West, the mother and the noncustodial parent. The State chose to represent West while she was the noncustodial parent, instead of Johnson.

Also on Sept. 1, 1993, two years after the State filed the Petition for arrearage and to modify child support (Sept. 1991), the State Circuit Court entered an agreed order as noted on page 2 of the State Court of Appeal order. (Exhibit "E-13")

The State failed to comply this order in the matter of turning over the money until Jan. 1994 and continue to seek arrearage from Johnson.

Page 5, of the State Court of Appeal order noted that the agreed order "waived any complaint which he had with respect to 1991 refunds" and the the State Adminstrative order agreed and noted this order did not adjudged the other tax refund interception.

Half of the 1991 tax refund was turned over to Johnson as agreed, but not turn over to him until Jan. 1994, thereafter on feb. 1994 Johnson filed a Motion for Tort action and Refund of his 1989 and 1990 tax refunds which were intercepted in 1990 and 1991 while he was still in the State Circuit Court.

This motion was pursuant to Illinois S. Ct. Rule 137 for attorney fees and damages due to the State of Illinois filing the petition of Sept. 1991 for arrearage and to modify an order of support the State claimed was entered on March 1, 1988, and also pursuant to 45 CFR 303. 72 (h) (6) because they intercepted Johnson's tax refund based on an order that they claimed was entered on March 1, 1988, but they wanted to apply the money to the order of support they are now claiming was entered on Jan. 14, 1988.

On March 8, 1994, the State Court hearing office noted that it had jurisdiction and recommended to the Cook County Circuit Court that Johnson's tax refund be refunded to him. ( exhibit "E-16").

On the same day March 8, 1994, the Cook County Circuit Court noted for the first time "that a child support order has never been entered in this case ". The matter was continued in Apirl 1994.

The State then failed to refund the moneys that they now knew was erroneously or wrongfully intercepted by them as required .

Johnson's motion for refund and tort was still denied because the court assumed the matter refund was adjudged by an order in Sept. 1994.

Johnson brought his denied motion for tort action and refund to the State Court of Appeal, case 1-94-1361 almost a year after the March 8, 1994, order was entered.

The State still refused to refund the money that was wrongful or erroneously intercepted although they knew there was never an order of support entered against Johnson. Johnson then filed a complaint on Feb. 28, 1995 in the U.S. District Court pursuant to 42 U.S.C. 1983 and 1985 while his motion for tort action and refund was pending in the State Court of Appeal ( exhibit "E10").

The U.S. District Court entered an order on May 8, 1996, giving Johnson leave to amend his complaint. Johnson's amended complaint was filed on May 20, 1996, where he brought a complaint against the Respondents under 42 U.S.C.A. section 1983 and 1985 in which he alleged that his constitutional right was violated by the method chosen by Respondents to establish and to enforce child support.

In June 1995 the State Court of Appeal noted on page 2 that "the matter of whether an order of support entered in Jan. or March 1988 was pending in the State Court for 2 years" and on page 5 that "the State Circuit Court lacks jurisdiction in the matter of tort action and refund".

The State Court of Appeal also noted on page 5 that in the matter of refund and tort action that Johnson must seek action in the State Court of Claims and refund through an Administrative review.

The State Court of Appeal's order Reversed and Vacated the order that denied Johnson's motion for tort action and refund as noted on page 6. This order was later affirmed by the Illinois Supreme Court in the order of West v. Johnson Case No. 79593, in Oct. 1995.

Due to this State Court of Appeal order that was entered in June 1995, four months after Johnson filed his complaint in the U.S. District Court which Reversed and Vacated the order that denied Johnson's motion for tort action and refund, under 28 USC 1367 (d) Supplemental Jurisdiction, Johnson had the right to seek tort action and refund of his 1989 and 1990 tax refund that was intercepted by the State, without violation of statue of limitation as long as Johnson filed his complaint in the timely manner.

When West became past due in her child support payments, the State sought to intercept Johnson's tax refund for her arrearage. (exhibit E-12 ) and on July 24, 1996, the State commenced withholding $75.00 of Johnson's wages per check (U.S. District. exhibit E13).

The State filed Motion to Dismiss Johnson's complaint on behalf of all the Respondents and Johnson filed a motion to strike the State's motion to dismiss and their memorandums.

Johnson was then given an administrative review on the matter of the tax refund interceptions of 1990 and 1991 in Oct. 1996, after he noted in his complaint that he was denied an hearing and that the State failure to inform him of his rights to of a review (exhibit E-21).

At this administrative review, Petition No. 96 70723 of Case No. NA - 200-28531-50 a court reporter was present and a copy of her noted is attach to Johnson's U.S. Court of Appeal Appendix.

The U.S. District Court entered an order on Nov. 14, 1996, that close out the Petitioner Johnson's motion to strike the Respondent's motion to dismiss and all of his other motions. The Court then entered a judgment in favor of the State of Illinois and against the Petitioner Johnson.

This order was entered because the U.S. District Court erred when he noted that Johnson was ordered to pay child support, which cause them to noted

that they lacks jurisdiction under the Rooker-Feldmen doctrine and statue of limitation to bar this case.

The U.S. Distorct Court decision was base on there being an order of support entered against Johnson and that Johnson was able to complaint with the State's laws in seeking an administrative review, but there was never an order of support entered and under the State laws the only way a person could get such an adminstrative review was by that person presenting the order of support in quiestion to the State. This is shown in exhibit "E-24" and noted on page 19 of the adminstrative hearing transcript.

Johnson filed a motion to review and to vacate the U.S District Court order on Nov. 21, 1996, and to alter or amend on Nov. 22 , 1996, claiming that on March 8, 1988, the State Circuit Court noted that there was never an order of support entered against him; that these issue that involve violation of constitutional right and federal laws, not State laws, that the action is due to the State failure compliance with the federal laws as require 45 CFR 303. 72 and that he was denied due process due to the State failure comply with these laws.; but the U.S. District Court denied these claim due to it lack of jurisdiction although under 28 U.S.C. 1331, this is a federal questions..

Johnson filed a Notice of Appeal on Dec. 11, 1996 and a Jurisdiction Statement on Dec. 18, 1996; and the designation on the records on Appeal was filed in the District Court on Dec. 24, 1996.

Johnson's Deposit of Record on Appeal, also included the transcript of the State's Administrative hearing that was given by the Illinois Department of Public Aid Bureau of Child Support Enforcement in Oct. 1996.

On July 15, 1997, the U.S. Court of Appeal entered an order that denied Johnson's complaint.

On page 2 of the U.S. Court of Appeal order it was noted: "We need not address whether the District Court was correct to dismiss to Rooker-Feldman grounds because we agreed that statute of limitation barred Johnson's complaint", " the statue of limitation for sec. 1983 and 1985 claims arising in Illinois is two years.

Also on page 2 of the U.S. Court of Appeal it was noted "the district court made substantive errors", "Johnson was never ordered to pay child support," and "on March 8, 1994, the State Court hearing office recommended to the Cook County Circuit Court that Johnson's tax refund be refunded to him; but the U.S Court of Appeal erred in the date in which the State Circuit Court noted the nonexistence of an order of support was entered.

The U.S. Court of Appeal erroneously noted that "in May 1992 the Cook County Circuit Court noted that a child support order has never been entered in this case". (exhibit "E -1" and "E-16").

Johnson filed a motion for rehearing in which he addressed the U. S Court of Appeal order and the opinions.

Johnson claimed that this is supported by page 2 of the U.S. District Court order and page 2 of the State Court of Appeal order agreed the matter of whether there was an order of support entered in this matter was pending in the State court for 2 years; and that Johnson filed his motion for tort action in the state court in Sept. 1991.

Under Rooker Fieldmen doctrine the U.S Court of Appeal can't review this State Court of Appeal order since it was affirmed by the State Supreme Court in Oct. 1995.

Johnson tried to explain that his State Circuit Court motion for tort action and refund was pending in the State court until March 8, 1994; not May 1992, 8 months after State filed the petition for arrearage in Sept. 1991 (exhibit "E-1" and "E-2" ).

Johnson also tried to explain that the State Court of Appeal noted that the matter was pending in the State court for 2 years, not 8 months ( May 1992), that this will mean the issue of whether an order of support was entered was pending in the State Circuit Court until 1994, 2 years after the first hearing on this matter

This will also means that statute of limitation is not an issue since Johnson filed his complaint in the U.S. District. Court in Feb. 1995 lass than a year later.

Johnson's motion for rehearing was denied by the U.S. Court of Appeal on Aug. 25, 1997.

On Oct. 31, 1997, Johnson sent his Petition for Writ of Certiorari to the U.S. Supreme Court via by U.S. mail. The Clerk of the Court received Johnson's Petition for Writ of Certiorari on Nov. 3, 1997

Johnson was claiming that there was an err made in the date in which the U.S. Appellant Court assumed the State's Circuit Court noted the nonexistence of an order of support and this cause them to barr his complaint under statute of limitation grounds.

Johnson also claim that this date is in conflict in decision of the higher state court deision.

On Dec. 23 , 1997, Johnson's Petition for State of Illinois Administrative Review was dismissed for want of jurisdiction.The State administrative officer entered an order which noted that the State intercepted Johnson's tax refunds based on an assumption that an order of support has been entered as shown on page 2 letter "C", that there was never an order of support as shown on page 3 letter "H", that the May 1992 order was address as shown on page 3 letter "I", that the state failed to inform Johnson of his rights to an Administrative hearing as shown on page 6, letter "S" and claimed that it lacks jurisdiction over these matters as shown on page 7.

Johnson filed a motion to review the State of Illinois Administrative Review in the State Circuit Court.

Johnson's Petition for Writ of Certiorari was returned to the Petitioner with a letter stating that he had 60 days from Jan. 22, 1997, to correct said petition and return it to the U.S. Supreme Court.

## REASON FOR GRANTING THE WRIT

### i) LIMITATION AND SPECIFICATION OF ERRORS.

The U.S. District Court made errs when they assumed that there was an order of support entered against Johnson. This cause this court to base jurisdiction, on the matter of refund, on State's administrative agent who has jurisdiction in cases that involve past due support and base tort action on the State violation of State laws which this court assumed was in compliance with federal laws.

But the U.S Court of Appeal corrected this err when they noted there was never an order of support entered against Johnson. The State Circuit Court and the Administrative officer, which is the agency in which the District Court noted have jurisdiction, agreed that there was never an order of support entered against Johnson. The argument in the U.S. Courts now is when was it noted by the State Circuit Court that there was never an order of support entered.

The answer is what can the U.S. District Court and the U.S. Court of Appeal review.

The U.S. District Court and the U.S. Court of Appeal agreed that under Rooker Feldmen Doctrine they can not review the higher State Court decision, but the U.S. Court of Appeal noted on page 2 of their order that "there was no need to review the matter of the Rooker Feldmen Doctrine".

If the U.S. Court of Appeal would have review the matter of the Rooker Feldmen Doctrine they would had noted the time in which this State Court of Appeal noted the matter of whether there was an order of support entered in Jan. or March 1988, was pending in the State Circuit Court for 2 years, not just 8 month (May 1992).

The failure of the U.S. Appeal Court to review the matter of Rooker Feldmen doctrine cause them to violate this doctrine and 28 U.S.C. 1257, because they review the time in which the State Court of Appeal noted the time in which the matter of nonexistence of support was pending in the State Court when they noted that May 1992 the State Circuit Court noted that there was never an order of support entered in this case.

The U.S Court of Appeal noted on page 2 that the Cook County Circuit Court administrative officer recommended to the Cook County Circuit Court that Johnson's tax refund be refunded to him, but they erred when they noted "in May 1992 the Cook County Circuit Court noted that a child support order has never been entered in this case". There is nothing to support this May 1992 claim.

On March 8, 1994 the Cook County Circuit Court noted that "a child support order has never been entered in this case". This was entered on the same day, after the Cook County Circuit Court administrative officer recommended to the Cook County Circuit Court that Johnson's tax refund be refunded to him.(exhibit " B" and "M")

Any exhibit that with just a letter such as (exhibit "B"), will be found in the Plaintiff's Motion to Strike the Defendant's Motion to Dismiss and Memorandum.

This claim of when it the nonexistence order of support was noted is supported on page 2, of the U.S. District Court order and page 2 of the State Court of Appeal when they both agreed that the matter of whether an order of support was pending in the State court for 2 years. It was also affirmed by the State Supreme Court in Oct. 1995.

Exhibit "L", "L1", "L2", "L 3" and "L 4" of the Plaintiff's Motion to Strike the Defendant's Motion to Dismiss and Memorandum show that this matter of whether an order of support was entered was pending in the State court for 2 years due to the State's trying to locate the order of support in question or the court report's notes that shows that an order of support was entered. While the State was trying to locate the order of support in question or the court report's notes that shows that an order of support was entered the parties agreed to address the matter of modification of child custody.

Page 2 of the U.S. District Court order and page 1 the State Court of Appeal order the courts agreed that this matter began when the State and West filed their petition for arrearage against Johnson in Sept. 1991 (exhibit "E").

This means after it was discovered that the order of support, which was assumed to be entered in Jan. or March 1988, was not in the State court

Statements, and 735 ILCS 5/13-215, fraudulent concealment limitation is toll.

Other evidence to support the claim that Johnson filed his complaint in a timely manner is page 2 of the State Court of Appeal's order 1-941361, which noted that "there was a intervening period in which Johnson was awarded custody of the minor child".

Custody was modified on May 5, 1993.(U.S District Court Exhibit E 18). Any decision entered on the matter of nonexistence of child support hereafter will mean was Johnson's complaint was filed in a timely manner since Johnson's original complaint was filed in the U.S. District Court in Feb. 1995.

Johnson also raised the issue of the State tried to conspire to cover up the fact that an order of support was entered when the State brought the matter of arrearage to the State Circuit Court in Sept. 1991. If that is the case, the limitation would not commence until the conspiracy had ran its course.

Johnson claimed this is due to the time in which the State filed the petition for arrearage and refund in Sept. 1991 for West and because the matter was brought court in about 8 weeks after it was filed instead the time it take a normal case which is years.

It was also due to the amount of time it was pending in the State Court without evidence to support it the claim that an support order was entered and the State supporting the noncustodial parent when the custodial parent was seeking support and return of 1992 tax refund while the money was in the State's hands.

The U.S Court of Appeal also erred in addressing issue of continuous violation. This Court noted on page 3, "A continuing violation required a pattern that alerts a Petitioner to a cause of action over time rather than at the time of each violation". The U.S Court of Appeal addressed the withholding of Johnson's wages in Aug. 1996 on page 3 and noted that "Defendants act in Aug. 1996 occurred more than four years after the attempt to intercept Johnson money," and "In Johnson's case there was no such pattern of violation at least after 1992".

In addressing Johnson's complaint this Court must remember that Johnson claimed that the State violated his right under 42 U.S.C.A. section 1983 and 1985 by the method chosen by the State to establish and to enforce child support. ( exhibit E-25).

As long as the method in which the State continued choose to use, to establish or enforce a support order without a valid order of support being entered, this method is a continued violation of Johnson's rights and federal laws.

This Court erred when it noted that, "In Johnson's case there was no such pattern of violation at least after 1992" , because if the U.S. Court of Appeal assumed that the State court of Appeal noted in May 1992 the nonexistence of an order of support, they should also assumed the it was a continue violation of child support enforcement laws when the State chose to represent the noncustodial parent West and continue to seek arrearage from Johnson in Aug. 1993, (exhibit "E-10") and when they sought to intercept Johnson's tax refund in Sept. 1996 (exhibit "E-12").

This Court must remember one of the issue that is before these U.S. Court is the wrongful method in which the State chose to enforce child support claims.

The Sept. 1, 1993, order that was entered in the State Circuit Court (exhibit "E-11) broght any alleged arrearage that was claimed to be owed by Johnson to zero and it also issue a child support order against West and for West to began payments of $150.00 on 10-1-93.

Exhibit "E-12" show that the State erroneously send a "Notice of intent" to Johnson and that it was sent 2 year after the Sept. 1, 1993 order was entered, just like in Jan. or March 1988 when the State erroneously assumed an order of support was entered against Johnson and also waited 2 years (July 2, 1990) to send a "notice of intent" to Johnson. (exhibit "G").

The State's pattern to enforce claims of past due child support is to wait two years after the order of support in question was allegedly entered. In both of these case it took two years to enforce an order of support that was never entered against Johnson.

The alleged support order that was claimed to be entered against Johnson in Jan. 1988 resuilted in the State wrongfully seizing Johnson money 30 months later in July 1990, just like the alleged support order that was claimed to be entered against in Sept. 1993 resuilted in the State wrongfully seizing Johnson money 34 months later in July 1990. A 4 month different in time and in a different method, but for past due support that was never entered.

If the U.S. Court of Appeal assumed that the State court of Appeal noted in May 1992 the nonexistence of an order of support, they should also assumed the it was a continue violation of child support enforcement laws when the State against chose to represent the noncustodial parent West and continue Apirl 18, 1994 (exhibit "E-15"). On Apirl 18, 1994, Johnson was awarded custody for 11months, but the State still chose to repersent West.

Exhibit "T" where it is noted Amounts Collected Though Special Offset Programs, shows that the State could have made West repay all the money that was wrongfully intercepted up to six years ( until 1996), but the State chose to repersent West as the non custodial parent and after they knew that there was never an order of support entered against Johnson.

The State also continue to violate federal child support enforcement laws when the State failed refund the money once they discovered that the money was wrongfully or erroneously seized and also failed to refund the money promptly pursuant to 45 C.F.R. 303.72 (f) (4) or (g) (7), after the administrative review noted that there was never an order of support entered against Johnson in thier order.

The State also choose not to repersent the child while the child is in Johnson care or give Johnson's case to the Attorney General Office as required under 750 ILCS 20/17.3 and after Johnson have paid his fees for such service.

The State Circuit Court noted that the State Attorney Office can repersent the child while in Johnosn care due to conflict. This failure of the State to give Johnson's case to the Attorney General Office as require is denieding Johnson the right to equal protection of the laws.

Before Johnson filed his complaint in the federal court, the State refused to represent the child or turn the case over to the Attorney General Office as required under, while the child is in Johnson's custody although Johnson paid the fees as required ( exhibit J).

This also raised the issue of gender discrimination or whether there was a conspiracy to cover up the fact of the wrongful action and to prevent refunding the money. For some reason the State chose only to represent the mother and not to refund the money that they knew they had no probable cause to seize.

The argument of limitation is not when Johnson knew of the tax refund interception because just like the State Circuit Court he assumed that an order of support was entered against until the transcript of Jan. 14, 1988 was produce and after the Court review all the records on March 8, 1994.

The argument of limitation is based on when he discovered the violations and the State continued to violate Johnson's rights and federal laws.

Whether the nonexistence of a support order was noted in 1992 or 1994 Johnson still would have not violated statue of limitation because limitation could have been tolled if limitation is based on when the State know or should been knew of the violation then fraudulent conceal the facts and continue to violate Johnson rights and federal laws.

**ii). IF A NONEXISTENCE OF THE ORDER WAS NOTED IN 1992**

Even if the State Circuit Court would have noted the nonexistence of an order of support in May 1992, Johnson would have still filed his U.S Court complaint in a timely manner because under 28 USC 1367 (d) Supplement Jurisdiction and 735 ILCS 5/13-217, Reversal or Dismiss limitation would have been tolled.

On page 2 of the U.S Court of Appeal order noted "in May 1992 the Cook County Circuit Court noted that a child support order has never been entered in this case.

Both U.S. Courts agreed that there is a 2 years statute of limitation in filing a complaint pursuant to 1983 and 1985.

On page 8 of the U.S. District court order noted "He should have brought suit by December 31, 1994"

All the U.S Courts, the State court of Appeal and the State Administrative officer agreed that Johnson filed his motion for tort action in the State Circuit Court in Feb. 1994 and the State Circuit Court denied this motion for refund on April 18, 1994, because the court assumed this matter was adjudged by an order, not due to statute of limitation grounds. Nor did the State Court of Appeal barred Johnson's motion for tort action that he filed in the State Court under statute of limitation ground, therefore Johnson's motion for tort action was filed in the State Circuit Court in a timely manner and can not be barred under statute of limitation grounds.

All the U.S Courts, the State court of Appeal and the State Administrative officer agreed also agreed that Johnson brought his Johnson's motion for tort action that he filed in the State Court to the State court of Appeal who entered an order that Appeal vacated and reversed this State's Circuit Court decision in June 1995.

Since the State Circuit Court denied Johnson's motion for refund and tort on April 18, 1994 and in June 1995 the State Court of Appeal vacated and reversed this State's Circuit Court decision, under 28 USC 1367 (d) Supplement Jurisdiction and 735 ILCS 5/13-217, Reversal or Dismiss limitation would have been toll at the less 30 day.

But since Johnson filed his complaint pursuant to 42 U.S.C 1983 and 1985 in the U. S. District Court in Feb. 1995, 4 months before the Sate's Court of Appeal's order was entered in June 1995, Johnson complaint was filed in a timely manner.

Limitation would have also been toll due to the State Continuos violation and the State Court would have not continue to seek proof of an order of support after May 1992:

There wouldn't have been a need for the State Circuit Court to have entered an order on May 19, 1992, for the court reporter to produce the proceeding of Jan. 14, 1988, if there was already knowledge that there was never an order of support entered ( exhibit E-7 ) .

There would be no need for the State Circuit Court to entered an order prohibiting the State of Illinois from disbursement of the money that was intercepted after the Court ordered the State not to intercept Johnson's tax refund without presenting the alleged order of support on March 19, 1992 (exhibit E-7 ).

The State Court of Appeal's order world have never noted that there was question of whether an order of support was entered in Jan. and March 1988, which was pending for 2 years due to the State failure to produce the order of support in question when the petition for arrearage was filed in Sept. 1991.

The Illinois Department of Public Aid ( IDPA) and the Cook County State Attorney Office (SAO) who are professionals in this matter, would not continue to enforce this nonexistence of a child support order and filed a petition on Sept. 1, 1993, seeking arrearage from Johnson more than a year after this nonexistence of a child support order was claimed to be entered (exhibit "E-10").

Johnson would have never agreed on Sept. 1, 1993, to give West half of the money that was intercepted in 1992 if he knew that there was never an order of support entered against him and the State should have never intercept Johnson's tax refund in 1992, ( exhibit E-11).

The fact of the matter is there was never an order entered in 1992 that noted the nonexistence of a child support and there is nothing to support the claim, just like there was nothing to support the claim that an order of support was entered against Johnson, for if the nonexistence of support was discovered in 1992, then the action taken by the State is a continuos violation of the child support laws and Johnson rights or an conspiracy to violate the child support laws and Johnson rights to cover up the fact of the State action.

**(ii) POSSIBLE CONSPIRACY.**

In Johnson complaint he raised the issue of gender discrimination and whether there was a conspiracy to cover up they failure to comply with federal child support laws.

The violation began when Johnson was named the father of the child on April 30, 1986, but was never informed Johnson of the time and place of the hearing. The problem is Johnson is not the biological father due to his absence when West conceived.

In 1988 the State tried to have an order of support entered against Johnson, but it was never entered but failure. The State upon its own initiative erroneously or wrongfully submitted Johnson's name to the Clerk of the Court claiming that he was ordered to pay child support.

The amount of support was based on the amount the State was seeking Johnson to pay, and the date support was to have been entered was March 1, 1988, the date in which the State wanted support to begin.

When it came time to enforce this alleged order, the State failed to comply with 45 CFR 303.72 (a) (4) and (e) (i), (ii) and (iii), which required the State to have a copy of the order of support in question in the files and advise him of his rights and time to seek action.

Both of the State's Appellee's briefs from the U.S District court and the U.S. Appellant court shows that the State assumed that there was an order of support entered instead of them complying with federal laws by having an copy of the order of support in question in it's files.

In 1990 and 1991 the State intercepted Johnson's tax refunds for past due support pursuant to 45 CFR 303.72 as noted on exhibit E-12, that they were claiming was entered on March 1, 1988. ( exhibit "G" and "H").

That " In order for a state to divert a taxpayer's tax overpayments to satisfy taxpayer's child support obligations, state must show that it is assignee of child support payments which the taxpayer was originally ordered to pay over to custodial parent." ***Biddle, Bkrtcy. Iowa 1983, 31 B.R. 449***

In Sept. 1991 Respondent West filed the for arrearage and to modify child support that was claimed to be entered March 1, 1988 petition through the State, and Johnson filed a motion to modify custody in response. ( exhibit "E-2").

The evidence shows that this became a priority case. The State brought the matter to court about 8 weeks after it was filed. The State was trying to modify an order that they claimed was entered on March 1, 1988, in which they had no record of the case being in court on that day or records of an order of support being entered. ( exhibit "E-2" and "E-3").

When the State failed to produce this order of support in they claimed was entered March 1, 1988, on May 19, 1992 they claimed that the order of support in question was entered on Jan. 14, 1988 instead. ( exhibit "E-7").

The Court prohibit the State from intercepting Johnson's return without first having proof of an order of support but the State intercepted Johnson's 1991 tax refund in 1992. ( exhibit "E-6").

The parties agreed to address Johnson's motion for custody to give the State time to locate the alleged order of support or the notes the courts notes, instead the State try to use the half sheet and other papers to show that an order of support was entered but never signed by the judge. ( exhibit "E-9" and "E-10").

After Johnson was award soled custody the State continue to represent West, the noncustodial parent and denied Johnson service. ( exhibit "E-10").

By Sept. 1, 1993, an agreed order was entered to resolve all alleged outstanding arrearage against Johnson. If Johnson would have know that there was never an order of support entered, he would have never entered in to this agreement. ( exhibit "E-11")

Johnson only knew that there was never an order of support signed by a judge and under the State laws, the State could have used the notes of the proceedings to enforce child support.

In the State's response to Johnson's "motion to turnover" filed Sept. 1, 1993, they State claim that the transcript shows that there was an order of

support entered against Johnson on Jan. 14, 1988, but this was founded to be untrue and it show that the State had no cause to represent the noncustodial parent who is the mother.

The state may not encourage or authorize any private denials of due process or equal protection , but must instead remain strictly neutral with respect to such private conduct. ***Bright v. Isenbarger, 314 F. Supp. 1382.***

Again on April 18, 1994, the State chose not to represent Johnson, but chose to represent the mother, West in their motion to strike, although Johnson had soled custody, West was order to pay child support and the court noted that there was never an order of support entered against Johnson (exhibit "E-15" and "E-1") .

This motion to strike also shows that Johnson was seeking penalties under Illinois's S. Ct. Rule 137 because West filed the petition for arrearage in Sept. 1991 seeking arrearage for an order of support that was claimed to be entered in March 1, 1988 but they failed to produce this order and was now claiming the order of support was entered on Jan. 14, 1988 after they intercepted Johnson's tax refund and filed the petition for arrearage pursuant to an order they claimed was entered in March 1, 1988.

This motion to strike also claimed on page 2 that the State inform Johnson of his rights, but the administrative review order shows that this is untrue, the State never inform Johnson of his rights.

The State had no cause to seek action against Johnson to enforce child support and when the State was granted a chance to have an order of support entered against Johnson they chose not to. ( exhibit "E-8").

The State also chose not to turn Johnson's case over to the Attorney General Office since there a conflict of interest because the State represented West, instead they chose to take action against Johnson although West is the parent that was ordered to pay child support.

The State filed the petition for arrearage and to modify child support in Sept. 1991 to have an order entered where there was one needed. The State represented and continue to represent West because they normally represent the mother and the State program is made for single mother.

If it not a conspiracy then the State have a lot of question to answer, such as when did the state discover that there was never an order of support, was it when they sought to filed the petition in Sept. 1991, or did the State just violated Illinois S. Ct. Rule 137.

Under S. Ct. Rule 137, " the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

In the State's and West's petition for arrearage and to modify support they claimed that an order of support was entered on March 1, 1988, but they had no records of the case being before any State court on that day, nor did they have evidence to show that an order could have been entered in an other State since both parent have always lived in Illinois. As a attorney for the State, they knew better and when Johnson sought for cost and damages pursuant to Illinois S. Ct. Rule 137, he was denied, because it sound like tort although Illinois S. Ct. Rule 137 gave the court the right to impose sanction for the State or administrative hearing violating the rule.

After the State's and West's petition for arrearage and to modify support was filed and the State was order to search for the transcript of March 1, 1988 hearing Jan. 23, 1992, why around May 19, 1992 did the State claimed that the order was entered on Jan. 14, 1988 when they still had no records of the case being before any State court on that day, nor did they have evidence to show that an order could have been entered in an other State.

This was also a violation of S. Ct Rule 137 because it cause unnecessary delay or needless increase in the cost of litigation for 2 years as noted by the State Court of Appeal, State administrative hearing and the U.S. District Court, but they still agree that the State Court lack jurisdiction to impose sanction under S. Ct Rule 137, because it sound like tort.

Why did the State withdraw it's petition for arrearage and modify the order of support that was claimed to be entered on March 1, 1988, because they

had no proof of an order of support being entered at any time, turnover Johnson's 1991 tax refund, refund Johnson's 1989 and 1990 tax refund the gave to West because exhibit "T", show that they had 6 years to ask West to return the money and look for the alleged order that was being claimed to be entered on Jan. 14, 1988 since under 45 CFR 303. 72 (h) (6) the money that was intercepted could only be apply to the order of support it was intercepted for.

This would have protect the State from a suit, but the State program is for single mother and they chose not to have the father pay arrearage and have an order of support modify whether there was an order of support entered or not.

The State failed to refund the money that was wrongful seized because of gender discrimination and failure to comply with federal child support laws. They chose to fraudulently conceal the fact on the nonexistence order of support to represent and continue to represent the mother who lose custody of the child.

**iii) ROOKER-FELDMEN DOCTRINE**

The answer to whether the U.S. Courts will be reviewing the higher State Court decision by addressing Johnson's complaint which was filed in Feb. 1995 in the U.S. District Court, is they will only be reviewing the higher State Court decision if they was to review the 2 years time in which the higher State Court noted that the matter of whether an order of support was entered was pending in the State Court.

Johnson's complaint is not asking the U.S Court to review this 2 years time in which the higher State Court noted that the matter of whether an order of support was entered was pending in the State Court, because Johnson agreed that after the State failed to produce the of support they claimed was entered in Jan. and March 1988 the matter of whether an order of support was entered was pending in the State Court for 2 years.

Exhibit "E-7" shows that May 19, 1992 was the first time the State and West claimed that the order of support in question was entered on Jan. 14, 1988, after they failed to produce the order they claimed was entered March 1, 1988.

The State and West filed the petition in Sept. 1991 claming the order of support in question was entered on March 1, 1988 ( exhibit "E-2").

Johnson asking the U.S. Court to insure that the method in which the State choose to establish and enforce child support is not in violation of the federal laws and Johnson's constitutional rights since it may not be in violation of State laws. Pursuant to 28 USC 1331 this is federal Question not State.

Exhibit "E-12" shows that the State sought to offset Johnson's tax refund pursuant to 45 CFR 303.72, but they failed to comply with 45 CFR 303.72 (a) (4) and (e) (i), (ii) and (iii), which required the State to have a copy of the order of support in question in their files and to advise Johnson of his rights and the time in which he must seek action. This failure resulted into the violation of Johnson's rights since there was never an order of support entered against Johnson to enforce. This will also means that the State lack jurisdiction to offset Johnson 's tax refunds.

The State Court of Appeal noted on page 5 that in the matter of refund, Johnson must "file a complaint for administrative review within the 35-day limitation period " but exhibit "E-24" show that the Johnson want a review but State of Illinois denied him a review because this State rules required Johnson to produce the order of support in question for administrative review.

The State also failed to inform him of his right to an review and the time in which he must seek an administrative review.

On page 19 of the transcript shows that the State's IDPA officer noted that the State only review cases with a copy of the order of support is in question and that they never advise Johnson of his right to contest the interception. This is also noted on page 6 letter "S" of the State's administrative review order.

The U.S Court still would have not reviewed this State Court of Appeal order although the State Court of Appeal noted " the court of claim has exclusive jurisdiction over tort action against the State".

This court must remember that the State Court of Appeal decision was base on if there was an order of support entered against Johnson that can be enforce in the State Courts.

This same State Court of Appeal also noted on page 4 of this same order " section 10-17.3 and 10-17.5 of the Public Aid Code (305 ILCS 5/1-1 et seq. (West 1992 ) ) provide that the IDPA may certify to the Internal Revenue Service and State Comptroll that a particular individual owes past due child support pursuant to an order of support." and "the ACT is the exclusive method of review" (Exhibit "E-17").

Johnson was never order to pay child support therefore he owed no past due support and IDPA lack jurisdiction to enforce past due support under this ACT.

The State administrative agent agreed that they lack jurisdiction in this matter denied Johnson's motion for refund for wanton jurisdiction.

The question is who has jurisdiction to refund the moneys that the State intercepted from Johnson for past due support under the ACT and pursuant to 45 CFR 303.72 and to impose damages and cost as required under the State S. Ct. Rule 137, when the State and West filed the for arrearage and to modify child support that they wrongfully claimed was entered although S. Ct. Rule 137 notes that the court in which the claim was filed has Jurisdiction.

Who has jurisdiction when the State Court of Appeal entered an order that vacated and reversed the State Circuit Court decision that denied Johnson's motion for tort action and refund and noted that the State Circuit Court lacks jurisdiction.

Johnson had the right to continue to seek refund and tort action under 28 USC 1367 (d) Supplement Jurisdiction, because Johnson filed his complaint in the U.S. District Court 4 mouth before the State Court of Appeal order was entered.

The State Court of Appeal noted on page 5 that in the matter of tort action the State's court of claims has jurisdiction, but what if it's federal question not State Question, and the State federal laws and rule not State Laws and rules. Who has jurisdiction now?

Who have jurisdiction when Johnson filed his complaint in the U.S. Court District Court, in a timely manner, in Feb. 1995 and 4 months later in June 1995 the State Court of Appeal entered it order which denied Johnson complaint for refund and tort action pursuant to Illinois S. Ct. Rule 137 because the State Circuit Court lack jurisdiction in a matter that sound like tort, and because Johnson failure to seek an administrative review under the "ACT" was due to the State failure to comply with federal laws to inform Johnson of his rights to an administrative review in which the "ACT" dose not apply since there was no order of support to enforce.

This Court must also remember that the State Circuit Court claim for tort was pursuant to Illinois S. Ct Rile 137 as not in exhibit "E15", while Johnson's U.S. Court complaint noted that " he brought against the Defendants, under 42 U.S.C.A. section 1983 and 1985, which he allege that his constitutional right was violated by the method chose by the Defendant to establish and to enforce child support". This was a federal question.

Johnson's U.S District Court complaint was not asking the U.S. Court to review the matter of the court of claims to have jurisdiction over tort action pursuant to S. Ct. Rule 137 and State question or whether under the "ACT" he show have sought for an administrative review for refund if an order of support was entered against him and he was informed of his right.

Exhibit "O" shows that Johnson want an administrative review but he was denied the review because he could not produce the alleged order of support that was in question because it was never entered. This where is a conflict in the State laws and Federal laws.

If the State would have complied with the federal laws by having a copy of the order of support in question as required under 45 CFR 303.72 (a) (4) and to inform Johnson of his right to an administrative review before intercepting his tax refunds for arrearage as required under 45 CFR 303.72 (e) (i), (ii) and (iii), the State would have just cause for their action if there was an order of support to enforce.

Under 28 USC 1251 (b) (2) and 28 USC 1291 the United State Supreme now has jurisdiction to review this matter.

The differences between the State laws or rules and federal laws or rules is the State laws or rules do not require the State to have a copy of an order of support in their files to enforce child support, as require under the federal laws such as 45 CFR 303.72 (a) (4 ).

Under State laws or rules, it's the responsibility of the parent who is fighting the offset to show the order of support in question to prevent his tax refund from being intercepted and to be given an administrative review as shown in exhibit E-24.

Under federal laws, such as 45 CFR 303.72 (e) (i), (ii) and (iii) the State must inform the parent of her or his rights to an administrative review by submitting the State or at the parent's request the State with the order upon which the referral for the offset is based. Under 45 CFR 303.72 (e) (iii), the State must also inform the parent of the procedures and time frame for contacting the State to request administrative review.

The problem is that the State offset Johnson pursuant to 45 CFR 303.72 as show on exhibit "E 12", the Illinois Department of Public Aid notice of intent. The hearing officer noted in the transcript that this was an notice of intent it do not inform Johnson of his right.

The State Court of Claims can say that under the State laws Johnson had a chance to prevent the tax refund, but he failed to commence an action under the "Act" in a timely manner when he failed to produce the order of support in question as required and only the Court in which the S. Ct. Rule was violated could Johnson seek attorney fees

This method in which the State enforces child support by offsetting tax refunds for past due support may work as long as there is an order of support to enforce. But what if there was never an order of support entered to enforce and the State assumed or made errs in its records noting that there was an order of support entered as they did in this case West v. Johnson then the State have violated federal laws.

Federal laws and rules such as 45 CFR 303.72 (a) (4 ) guarantee that there is a copy of the order of support in question in the files before offsetting tax refunds, the State can not make this guarantee

Another problem with the State laws or rules is that Johnson's tax refund were intercepted due to his failure to commence an action under the "ACT" in a 35 day timely limit. The State Court of Appeal noted on page 2 of its order, the matter of whether an order of support was entered was pending in the State Court for 2 years.

Johnson's tax refund would still have been intercepted due to the time in which it took the State Circuit Court to note there was never an order of support entered.

The State may not have acted under color of State laws to enforce this nonexistence order of support, but it's a fact the State and the other Respondent acted under color of federal laws to enforce this nonexistence order of support, which resulted in a violation of Johnson's constitutional rights that are guaranteed under the 4th and 14th amendment and other federal laws.

Under 28 U.S.C. 1331 and 28 U.S.C. 1443 This is a federal questions and Civil right case in which the federal court has jurisdiction.

## CONCLUSION

The U.S Supreme Court should grant the Petition for Writ of Certiorari. The published decision of the United States Court of Appeal conflicts with the Illinois Court of Appeal decision which was affirmed by the State Supreme Court and involve the time in which the matter of whether an order of support was entered was pending in the State Circuit Court before the State Circuit Court noted that there was never an order of support entered.

The U.S. Court of Appeal will be review the higher State court decision and violating the Rooker-Feldmen doctrine if the noted that the nonexistence order of support was noted at any time in 1992 because that will be less than a year the U.S. Court of Appeal will be claiming the matter was pending in State Court . This is also in conflict in the United State District Court decision of the matter pending in the State Court for 2 years. Johnson's complaint should not be barred under statute of limitation grounds because limitation could as be toll for a number of reasons noted.

In the matter of Rooker-Feldmen doctrine this court now jurisdiction to review all the courts decision and the U.S. Court of Appeal would have only reviewed the higher State Court decision when they noted the time in which the matter of whether an order of support was entered was pending in the State court for less than 1 (one ) year and denied Johnson's complaint because of it, while the higher State Court noted that the matter of whether an order of support was entered was pending in the State Court for 2 years and statute of limitation was never an issue.

If the Rooker-Feldmen doctrine was pursuant to who has jurisdiction then the U.S. Courts would have not been reviewing the higher State Court decision the only issue would be the matter of refund and the Administrative hearing noted on last page of it's order that Johnson motion for refund was dismiss for want on jurisdiction.

This matter is now pending in the State Circuit Court noted on April 18, 1994 and may note again that the money was not in the State's procession and denied Johnson motion for refund. This because West had the money.

Ether 1994 or 1992 the State knew that there was never an order of support entered against Johnson and the Administrative Officer agreed that there was never an order of support entered, but failure to refund the money promptly as required under 45 CFR 303. 72 (f) (4), instead they failed to comply. Under 45 CFR 305.100 there is an pentalty which Johnson is seeking for the violation or the conspircy to violate his rights

The administrative review always lack person jurisdiction over Johnson in this matter of past due support because Johnson was never order to pay child support, but they has subject matter jurisdiction.

The court of claims has subject matter jurisdiction over matter sounding in tort but that in State violation. Johnson's motion for tort action was pursuant to the State rule S. Ct. Rule 137, and was base only on the manner in which the State filed the petition of Sept. 1991 for arrearage, not whether any of the method chosen by the State to establish and to enforce child support was in violation of Johnson's right and federal laws.

These are two different issue tort and the U.S. Court of Appeal would have not been reviewing the higher State court decision and violating the Rooker-Feldmen doctrine in address Johnson's U.S Court complaint.

THEREFORE Johnson prays that this Court will enter an order to end the conflict between the Courts in when was the nonexistence of an order of support was noted in the State Circuit Court and who has jurisdiction in this federal question in this matter of tort action and refund when the State's violation of federal is not in violation of the State's laws by entering an order for Johnson's complaint for refund and tort action to be review in the U.S. District Court and order the State to refund the amount that was intercepted with interest as required by laws, cost and damages in the maximum amount in which the State of Illinois may be fine for their failure to comply with child support enforcement laws under 45 CFR 305.100, since the State of Illinois failure to comply or conspiracy to violate the federal child support laws and child support laws from 1988 - 1998 resulted in the violation of Johnson's rights.

I certify that the statement within this instrument is true to the best of my knowledge with evidence to support my claim .

Respectfully submitted ,

David R. Johnson
Petitioner Pro se
400 E. Randolph #2030
Chicago Ill. 60601
Phone (312) 819-1569

1A

# APPENDIX _A

No 1941361

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IN THE
APPELLANT COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| | |
|---|---|
| LYNNE WEST, on behalf of<br>CAREE WEST , a minor<br>Petitioner - appellee | ) Appeal from the<br>) Circuit Court of<br>) Cook County, |
| v.<br>DAVID JOHNSON<br>Respondent -Appellant, | ) No 84 M 911051 |
| Illinois Department of Public Aid ,<br>Cross-Appellant. | ) Honorable<br>) Morgan Hamilton<br>) Judge Presiding |

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## ORDER

Respondent David Johnson appeal pro sa from the circuit court's order of April 18, 1994 which denied his Motion for rule for Tort Acts .The Illinois Department of Public Aid ( IDPA ) cross- appeal from the same order in which the circuit court denied it motion to strike for lack of jurisdiction

When the State was unable to produce the original order, which was allegedly entered in January or March of 1988, and which was not in the court file, the court directed the State and the clerk of the court to find or reconstruct the original order.

The matter remained pending in the circuit court for two years while the parties disputed the existence of support order.

Also in an intervening period the respondent was awarded custody of the minor child.

APPENDIX A

Section 10-17.3 and 10-17.5 of the Public Aid Code (305 ILCS 5/1-1 et seq. (West 1992 ) ) provide that the IDPA may certify to the Internal Revenue Service and State Comptroll that a particular individual owes past due child support pursuant to an order of support.

The ACT is the exclusive method of review.

We find that respondent's agreement to the agreed order waived any complaint which he had with respect to 1991 refunds. asumming, arguendo, that te agreement did not also waive his claims with respect to 1989 and 1990 interception refund.

The Circuit Court lacks subject matter jurisdiction over these claims.

Respondent failed to institute an action under the act as required by the Public Aid Code by filling a complaint for administrative review within the 35-day limitation period

Accordingly, we reverse that portion of the circuit court's order of Apirl 18, 1994 which denied the IDPA's motion to strike, and we vacated that portion of the order which denied respondent's motion regarding " tortious act and wrongfil interception .
Reversed in part; vacated in part.

WOLFSON, J., with CAMPBELL, P.J. and BRADEN, j. , concurring.

Appendix B

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| DAVID R. JOHNSON | ) |
| Plaintiffs | ) No. 1: 95-CV- 0 1281 |
| vs. | ) |
| THE STATE OF ILLINOIS . et al., | ) Hon. John F. Grady |
| Defendant | ) |

MEMORANDUM OPINION

Defendant Illinois Department of Public Aid ( IDPA) ROBERT WRIGHT, the IDPA's director and PHIL BRADLEY as well as Defendant JACK O'MALLY, STATE 'S ATTORNEY of COOK COUNTY, and LEONAED N. FOSTER ASSISTANT STATE ATTORNEY have moved to dismiss the plaintiff's amended complaint .

Plaintiff David R. Johnson filed this pro se complaint alleging constitutional claims under 42 U.S.C. Sec. 1983 and 1985. The claim raise out of interception of Johnson's federal and State tax refund pursuant to child support arrearage claim made in the state court.

Yarber had previously been awarded sole custody and Johnson was ordered to pay monthly support by the state court.

When the state could not produce the original order, the matter was pending in the State Circuit Court for two years.

In May 1992, the court also ordered that all previously intercepted federal and state tax refund were not to be disbursed until further court order. These order were sought by Johnson to prevent the interception and distribution of his 1991 income tax refund .

Appendix B

Johnson was also eventually awarded custody of Caree West. Yarber was ordered to begin paying child support to Johnson

Johnson filed several; motion pro se again IDPA and the state's attorney office, alleging wrongful tax refund interception.

In June 1995 the Illinois Appellate Court held that the Administrative Review Law was the exclusive means for Johnson to challenge any child support action by the IDPA over tax refund interception.

Johnson filed a petition for leave to appeal the decision to the Illinois Supreme Court, but the petition was denied in Oct. 1995.

Rooker-Feldmen doctrine dictate that federal district court lack jurisdiction to review the decision of state court.

The doctrine follow from the Supreme Court's jurisdiction statute, 28 U.S.C. 1257 , which states that " a final judgment or decree rendered by the higher court or the State in which a decision can be had may be reviewed by Supreme Court by writ of Certiorari.

The Illinois statute of limitation applicable to personal injury claims provides that action shall be commenced within two years after the cause of action accrued 735 ILCS 5/13-202.

It is clear that Johnson discovered the interception of his 1989 tax refund on or about July 2, 1990, and thus he should have brought his sec. 1983 and 1985 claims for that interception no later than December 31, 1994.

date Nov.14, 1996

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago Illinois 60604

Submitted July 15, 1997
Decided July 15, 1997

Hon. John L. Coffey, circuit Judge

Hon.Joel M. Flaum, circuit Judge

Hon. Micheal S.Kanne, circuit Judge

| | |
|---|---|
| DAVID R. JOHNSON | )Appeal from the United State |
| Appellant-Plaintiff | ) U.S.Dist.for the Northern Dist. |
| vs. | ) of Illin, Eastern Division |
| THE STATE OF ILLINOIS , et al., | ) ct. 1:95-CV-0 1281 |
| Appellee-Defendants | ) John F. Grady, |

ORDER

We need not address whether the District Court was correct to dismiss to Rooker-Feldman grounds because we agreed that statue of limitation barred Johnson's complaint

The statue of limitation for sec. 1983 and 1985 claims arising in Illinois is two years.

The claim accrued when Johnson knew or should have known that his constitutional rights had been violated.

He also asserts it took him until March 8, 1994--when a State Court hearing office recommended to the Cook County Circuit Court that Johnson's tax refund be refunded to him.--to discover that no child support had been entered against him.

Appendix C

The assertion of David Johnson that a child support order has never been entered in this case.

In May 1992 the Cook County Circuit Court noted that a child support order has never been entered in this case.

We note that Johnson assert that the district court made committed procedural as well substantive errors.

A continue violation requires a pattern of violation that alert a plaintiff to a cause of action over time rather at time of each violation .

The judgment is affirmed
JULY 15, 1997

Appendix D

State of Illinois
Department of Public Aid
401 South Clinton Street
Chicago Illinois 60607

THE STATE'S ADMINISTRATIVE DECISION
Dec. 23, 1997

David Johnson
400E. Randolph Apt. 2030
Chicago Illinois 60601

Petition 96-70723-RR
RE; NA-200-00-28531-60
LYNNE WEST YERBER

The decision is revisable only through the Circuit Courts of the state of Illinois. The time the Circuit Court will allow for filling for such review may be as short as 35 days from the date of this letter.

On September 21, 1991 an Illinois Circuit Court (Domestic Relations Division ) entered an order stating, in part:

On March 1, 1988 the petitioner was ordered to pay $307.00 per month for current child support.

An Illinois Circuit Court entered an Agreed order, dated January 23, 1992 continuing the matter to March 19,1992 at which time the state's Attorney's office was to provide a transcript of the proceeding in which the alleged 1988 support order was entered to verify that order's existence.

Order May 19,1992 prohibited disbursement of any tax refunds previously entered pending further order of court.

The order further stated that the court reporter for the proceedings on January 14, 1988 shall appear before the court with transcript notes from that date or advise the court that these transcript notes are not available.

Appendix D

The court continued the case until June 30,1992.
An Illinois Circuit court entered an order, dated June 30,1992 continuing the case until September 21,1992 and stating that the state's Attorney's office is given leave to file a petition for child support since a previous child support order or transcript has not been located.

1. Federal and State Income Tax Refunds and other state payments

2. The Department shall provide the responsible relative with a notice prior to submitting a past-due support amount for intercept...

3. A request for redetermination made within 15 days from the date of mailing of the advance notice shall stay the Department from submitting the past-due amount.

On March 8,1994 Illinois circuit court entered an order continuing the matter to April 18,1994 on the petitioner's motion for rule for Tortuous Acts and his motion of wrongful tax Interception as the petitioner claimed the court's computer check revealed that a child support order was never entered in this matter.

At this hearing, the petitioner provided a copy of a proposed order which was recommended to the court by its Hearing officer on march 8,1994 but never entered. It states, in par:

On October 17,1996 an Illinois circuit court entered an order stating, in part:

IDPA shall adjust their records accordingly to reflect that petitioner owes zero in arrears of September 17,1996 and has never child support to (mother of child).

The petitioner owes zero in arrears as of September 17,1996 as a support order was never entered against him at any time.

Appendix D

On November 6, 1996 the Assistance Hearings Section received from DCSE a statement which provided in part:

As there was no tax protest filed for the tax years of 1989, 1990 and 1991, no letter was generated by child support indicating a right to appeal. We searched through Micro-film and the support Enforcement History Screens.

Because the petitioner did not timely challenge these intercepts with the Department and because the courts subsequently acquired jurisdiction and disposed of the issues of this petition, the Department no longer has jurisdiction over this matter.

This petition be dismissed for want of jurisdiction.

It Is DIRECTED THAT:

Appendix E

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
DOMESTIC RELATION DIVISION

| | | |
|---|---|---|
| Lynne West | ) | case No. 84 M 911051 |
| Petition | ) | IV-D No. NA 200-100733-50 |
| v | ) | |
| David Johnson | ) | |
| Respondennt | ) | |

ORDER - CONTINUANCE

This matter is before the Court on Respondent's Pro se Motion to review Adminstrative Order.

The State's Attorney's office is granted 28 day to respond to the Respondent's amended petition. Respondent granted 14 days to amend his petition.

Entered: March 11, 1998